

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

v.

STEPHEN GUTIERREZ,
Respondent.

Supreme Court Case
No. SC19-562

The Florida Bar File
No. 2018-70,160 (11J)

**UNCONDITIONAL GUILTY PLEA AND CONSENT JUDGMENT FOR
DISCIPLINE**

COMES NOW, the undersigned Respondent, Stephen Gutierrez, and files this Unconditional Guilty Plea and Consent Judgment for Discipline pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is and was, at all times mentioned herein, a member of The Florida Bar and subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is not represented in this matter.
3. Respondent is currently the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar File No. 2018-70,160(11J) and which is pending before the Honorable Christine Bandin, presiding as Referee.

4. The disciplinary measures to be imposed upon Respondent are as follows:

A. 91-day suspension.

B. Probation for a period of two (2) years. As a special condition of probation, Respondent will participate actively in the program offered by Florida Lawyer's Assistance, Inc. (FLA, Inc.), by signing a rehabilitation contract with that organization within thirty (30) days of the order of the Supreme Court approving this consent judgment. Should FLA, Inc. recommend a longer monitoring period than two years, Respondent agrees for the contract to be extended by no more than five (5) years from the date of the court order approving the consent judgment. The monitoring of Respondent's probation status shall be conducted under Supreme Court Case No. 15-1394.

Respondent will pay a Florida Lawyers Assistance, Inc., registration fee of \$250.00 and a probation monitoring fee of \$75.00 a month to The Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. *Failure to pay shall be deemed cause to revoke probation.*

5. The following allegations and rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:
- A. On April 14, 2016, Claudy Charles ("Charles") was arrested on suspicion of setting fire to his own vehicle in an attempt to defraud his insurer.
 - B. On May 2, 2016, Respondent filed a notice of appearance on Charles's behalf in the criminal case, styled *State of Florida v. Claudy Charles*, Miami-Dade County Circuit Case No. F16-7813.
 - C. Among other charges later nolle prossed, the Information charged Charles with second-degree arson alleging that Charles had set fire to his vehicle on January 9, 2016.
 - D. On June 14, 2016, Respondent filed a civil suit on Charles's behalf against GEICO in the case styled *Claudy Charles v. GEICO Indemnity Ins. Co.*, Miami-Dade County Circuit Case No. 2016-015231-CA-01.
 - E. In the initial complaint, Respondent represented that the damage to Charles's vehicle on January 9, 2016 was "caused by a vehicle collision in such a fashion as to cause substantial damage to the risk property."

F. The complaint alleged that Charles suffered losses in excess of \$200,000, that GEICO had failed to properly adjust his claim and, in denying it, had breached the terms of the underlying insurance policy.

G. On July 17, 2016, the state filed a notice of intent to offer evidence of a business record in the criminal case which consisted of a surveillance video. The video was inculpatory in nature, arguably indicating the defendant unsuccessfully attempting to set his car on fire, then leaving and returning to enter his parked vehicle. Shortly after, the vehicle erupted in flames.

H. On July 20, 2016, Respondent filed an amended complaint in the civil case again claiming that the damage was caused by a “vehicle collision.”

I. Thereafter, the criminal case went to trial. The defense was predicated on attacking the sufficiency of the state’s evidence in order to advance the defense theory of deployment of defective airbags.

J. As Respondent commenced his closing argument, smoke began billowing from his pocket; he then ran from the courtroom to the men’s restroom to extinguish the fire.

K. Upon Respondent’s return to the courtroom and questioning by the court, Respondent claimed that a battery used to charge phones and e-

cigarettes broke in his pocket. He denied engaging in a stunt, asserting the combustion was a coincidence.

L. The court took the battery and reserved on the issuance of a rule to show cause in order that the battery could be examined. Respondent resumed his closing argument. The jury returned a guilty verdict as to second-degree arson.

M. The state subsequently announced an investigation into the circumstances surrounding the battery fire. In addition, the court rescheduled the case so that Charles could consider requesting the appointment of a new attorney.

N. The next day, March 16, 2017, Respondent filed a second amended complaint in the civil matter. Despite knowing that a jury had found Charles guilty of setting fire to his vehicle, the latest complaint still represented that the damage was the result of a “vehicle collision.”¹

O. On March 17, 2017, Charles requested new counsel in his criminal case. The public defender’s office was appointed. Charles ultimately pleaded guilty to second-degree arson on May 11, 2017.

¹ At deposition in these disciplinary proceedings, Respondent offered that in his mind “vehicle collision” referred to the slamming of the car door.

P. On May 15, 2017, the state issued a memorandum analyzing whether Respondent's actions in the trial rose to the level of arson under Florida law. The memo opines that the state could likely establish that Respondent willfully caused the courtroom fire, but not that he did so unlawfully. Opining that Respondent ignited the battery as an attempt to demonstrate to the jury the feasibility of spontaneous combustion—a legitimate purpose, in theory—the memorandum concludes that Respondent's actions, while ethically problematic, did not rise to the level of arson under the applicable case law. Consequently, the state abandoned any efforts to hold Respondent in contempt or to seek criminal charges.

Q. As for the civil case, despite Charles's formal adjudication of guilt, Respondent did not withdraw, nor did he file a notice of voluntary dismissal until May 30, 2018. However, neither did Respondent take any affirmative action in furtherance of the civil lawsuit.

R. Respondent admits that his foregoing actions constitute a violation of the following Rules Regulating The Florida Bar: Rule 3-4.3 (... any act that is unlawful or contrary to honesty and justice), Rule 4-3.1 (meritorious claims and contentions), and Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

6. Respondent offers the following in mitigation:

- a. Respondent has no prior discipline.
- b. While conceding that his conduct was improper, Respondent attributes it to his lack of experience and complete understanding of the true meaning of zealous advocacy, rather than dishonest or selfish motive.
- c. Respondent suffers from personal and emotional problems having lost both his mother and sister to tragic occurrences during the relevant time period. Respondent has also been coping with his father's serious illness during this same time period. Additionally, following the events at issue, Respondent's wife initiated dissolution of marriage proceedings which added to Respondent's personal and emotional upset.
- d. Although not promptly, Respondent did ultimately voluntarily dismiss the civil suit underlying this disciplinary action.
- e. Respondent was inexperienced in the practice of law during the relevant time period having been admitted to The Florida Bar in September 2015.
- f. Respondent suffers from impairments for which he has been receiving and will continue to receive treatment.
- g. Respondent is remorseful for his conduct and its impact on both the justice system, the profession, and his client.

7. Respondent agrees that this Unconditional Guilty Plea and Consent Judgment for Discipline and every factual admission contained herein, specifically the admissions set forth in paragraph five, shall have full force and effect regardless of any subsequent recommendation or action taken with respect to the terms of discipline offered by Respondent pursuant to this Consent Judgment for Discipline.

8. Respondent recognizes that the disciplinary sanction to be imposed will ultimately be determined by the Florida Supreme Court which will not be bound to follow the recommendation of either The Florida Bar or the Referee in these proceedings.

9. Respondent acknowledges that unless waived or modified by the Court on motion of Respondent, the court order will contain a provision that prohibits Respondent from accepting new business from the date of the order or opinion and shall provide that the suspension is effective 30 days from the date of the order or opinion so that Respondent may close out the practice of law and protect the interest of existing clients.

10. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

11. Respondent agrees to eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of Respondent's status as an attorney, whatsoever. Respondent will no longer hold himself out as a licensed attorney.

12. If this plea is approved, then Respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$2,256.00. These costs are due within 90 days of the court order. Respondent agrees that if the costs are not paid within 90 days of this court's order becoming

final, Respondent shall pay interest on any unpaid costs at the statutory rate.

Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 90 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

13. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

14. This Unconditional Guilty Plea for Consent Judgment for Discipline fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 27 day of August, 2019.



Stephen Gutierrez
454 SW 8th Street
Miami, FL 33130-2814
(786) 390-7602
Florida Bar ID No. 117515
sg@sglawfirms.com

Dated this 27th day of August, 2019.



Rita Elizabeth Florez, Bar Counsel
The Florida Bar
Miami Branch Office
444 Brickell Avenue, Suite M-100
Miami, Florida 33131-2404
(305) 377-4445
Florida Bar ID No. 1011307
rflorez@floridabar.org